IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2253 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KC RATHOD - Petitioner(s)
Versus
ADDL.SALES TAX COMMISSIONER - Respondent(s)

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Appearance :
MR JC VYAS for Petitioner(s) : 1,
MR SP HASURKAR, AGP, for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 24/07/2006

ORAL JUDGMENT

1. The petitioner, working as a clerk in the Sales Tax Department, was served with a charge-sheet on 21.04.1986 by the respondent authorities with six charges regarding misappropriation of government

money and negligence in performance of his duty. It appears that the petitioner in his reply dated 25.04.1986 confessed his default and prayed for punishment tempered with mercy. The department removed him from service vide order dated 07/10.10.1994 against which he preferred appeal before the Gujarat Civil Services Tribunal. Vide order dated 30.01.1995 the Tribunal observed as under:

“ : ORDER :

The appeal is partly allowed. The order dt. 7/10.10.94 of the respondent is hereby set aside. The appellant is reinstated in service from the date of his removal. However, he is reverted from the post of Senior Clerk to the post of Junior Clerk with a direction that he would earn increments but he would earn increments but he would permanently be debarred from promotion. It is further directed that the appellant would not get any arrears of salary for the period from his removal to his reinstatement in service.

This 30th day of January, 1995.”

2. It is against this order that the petitioner has come before this Court praying for the following reliefs:

“11. The petitioner therefore prays that:

A) The Hon'ble Court may be pleased to issue an appropriate writ, order or direction to quash and set aside the impugned order at Annexure 'A' & Annex. 'B' so far as it debars the petitioner permanently from future promotions and be pleased to quash and set aside the impugned order at Annexure 'B' so far as it holds that the petitioner is reappointed in service. The Hon'ble Court may also be pleased to direct that the petitioner shall not be permanently debarred from future promotions and that after reinstatement on the post of a Jr. Clerk the petitioner should be treated as an employee who joined the services on 4/12/1978 and not from the date of his reinstatement. The respondent shall be directed to count the basic pay of the petitioner on the basis of the date of appointment as 4/12/1978 and may be directed to immediately pay the amount of difference. The Hon'ble Court may also be pleased to declare that the petitioner was reinstated in service with continuity of service.

B) Pending admission hearing of the final disposal of the petition the Hon'ble Court may be pleased to direct the respondent to revise the basis pay of the petitioner by

considering 4/12/1978 as the date of his appointment to the post of a Jr. Clerk and to pay to the petitioner his salary on the basis of such revised basis pay.

C) Any other just order be passed."

3. Heard the learned advocate for the petitioner. He has strenuously urged that considering the short period of defalcation, the petitioner having returned the monies to the state exchequer, the punishment of withholding of future promotions is extremely severe and harsh. That the petitioner may be treated as an employee on and from 04.12.1978 and not from the date of his reinstatement so as to entitle the petitioner with continuity of service and all consequential benefits.

4. This is a petition under Article 227 of the Constitution of India and hence, the parameters for exercise of jurisdiction are well-defined. It is not the case of the petitioner that the Gujarat Civil Services Tribunal has either exceeded its jurisdiction or acted without jurisdiction. Neither is it urged that the decision making process is vitiated in any manner so as to be termed

perverse. In the circumstances, this Court, in exercise of its powers and jurisdiction under Article 227 of the Constitution of India, does not find this to be a fit case to intervene in absence of any jurisdictional error.

5. In the aforesaid circumstances, it is not necessary to enter into any further discussion on merits of the case though agitated by the learned advocate for the petitioner. The petition is, accordingly, rejected. Rule discharged. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*